

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA : Criminal No. CR-1-06-111  
: Senior Judge Spiegel  
vs. :  
: **STIPULATION**  
STEVEN WARSHAK :  
:

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Pursuant to the Court's Order entered April 13, 2011 (Doc. 819), counsel for the United States and for the defendant, Steven Warshak ("the Parties") file this Stipulation setting forth (1) the Parties' view on the relevance of *Pepper v. United States*, 131 S.Ct.1229 (2011), and (2) the Parties' view on what the Court is authorized to do at re-sentencing.

Accordingly, the Parties stipulate as follows:

- (1) That under *Pepper*, the Court at re-sentencing may consider any evidence of defendant's post-sentencing rehabilitation, and whether such evidence supports a downward variance from the advisory Guidelines;
- (2) That the Court at re-sentencing is authorized to make the following determinations:
  - a. to clarify the amount of the fraud loss, and to explain the basis for that determination and the evidence upon which the Court relies (*Warshak v. United States*, 631 F.3d 266, 329-330 (6<sup>th</sup> Cir. 2010));
  - b. that based upon the evidence in the record, the Court has the authority to determine the fraud loss without an evidentiary hearing; and

c. that the Parties each reserve their arguments regarding the appropriate sentence to be imposed in this case, including whether any downward variance or departure is appropriate under *Pepper* or for any other reason.

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7/27/2011

DATE

s/ Anne L. Porter

ANNE L. PORTER

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7/27/2011

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s/ Mark Josephs

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7/27/2011

DATE

s/ Martin Weinberg per email authorization on July 27, 2011

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